

APPEAL NO. 042098
FILED OCTOBER 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 27, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter, April 8 to July 7, 2004, and that the appellant (carrier) waived its right to contest the claimant's entitlement to SIBs for the fifth quarter by failing to timely request a benefit review conference (BRC). The carrier appealed, arguing that the SIBs entitlement and waiver determinations are against the great weight of the evidence. The carrier contends that the hearing officer failed to make any finding that the claimant was completely unable to work. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant has a whole body impairment rating of 15% or more from the relevant compensable injury; that the claimant did not commute the impairment income benefits; and that the qualifying period for the fifth quarter was from December 26, 2003, to March 25, 2004.

Section 408.147 provides that if a carrier fails to request a BRC within 10 days after receipt of the Application for [SIBs] (TWCC-52), the carrier waives the right to contest entitlement to SIBs for that quarter. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE 130.108(d) (Rule 130.108(d)) limits the requirement to timely request a BRC to those instances where SIBs were paid in the prior quarter. The evidence reflects that the carrier filed a Request for [BRC] (TWCC-45) date stamped as received by the Texas Workers' Compensation Commission on April 20, 2004. The claimant testified that he faxed the first page of the fifth quarter TWCC-52 along with a letter from his doctor stating he was unable to work, to the carrier on March 31, 2004. The cover sheet of the facsimile transmission (fax) and the confirmation sheet were in evidence. Additionally, the claimant testified that he called the carrier to confirm the correct fax number on March 31, 2004, and his phone records were in evidence. The carrier contends that it did not receive the TWCC-52 until April 14, 2004, and an affidavit from a carrier representative was in evidence which stated that the TWCC-52 for the fifth quarter was not received by the carrier "at any point in time before April 14, 2004." The receipt of the TWCC-52 by the carrier was a factual determination for the hearing officer to resolve.

The carrier additionally contends that a complete TWCC-52 was not sent to the carrier and that the filing of an incomplete TWCC-52 form does not start the 10 day period for dispute of a SIBs quarter, citing Texas Workers' Compensation Commission

Appeal No. 000753, decided May 18, 2000. It was undisputed that the claimant did not perform a job search during the fifth quarter qualifying period. In Appeal No. 000753, *supra*, the claimant listed over 45 job contacts and her application was 18 pages. In the instant case, no job search was conducted so the pages the carrier argues are necessary to start the 10 day period of dispute are blank. The information necessary for the carrier to decide whether it would dispute the quarter was faxed to the carrier and the hearing officer was persuaded by the evidence, which included the claimant's testimony and fax confirmation sheet that the TWCC-52 was received by the carrier on March 31, 2004.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). There is sufficient evidence to support the hearing officer's findings that the claimant timely and properly filed the employee statement, the TWCC-52 for the fifth quarter with the carrier, and that the carrier did not request a BRC within 10 days of receiving the claimant's TWCC-52.

Because we have affirmed the hearing officer's determination that the carrier waived its right to contest the claimant's entitlement to SIBs for the fifth quarter, by failing to timely request a BRC, we need not address the merits of the SIBs determination.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701-2554.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge